

Remarks

Applicant traverses the Office Action dated April 5, 2007 in which a restriction of species was made. The Office Action has improperly applied standards from P.C.T. Rule § 13.1 while disregarding the relevant standards for a U.S. patent application. Applicant respectfully submits that the correct standard for a restriction requirement is set forth under M.P.E.P. § 800. Therefore, the restriction is improper because the Office Action has not applied the proper standard as is further explained hereafter. There are two criteria that must be met for a proper restriction: 1) the inventions must be independent (*see* M.P.E.P. § § 802.01, 806.06, 808.01) or distinct as claimed (*see* M.P.E.P. § 806.05); and 2) there would be a serious burden on the examiner if restriction is not required. Examiners must provide reasons and/or examples to support conclusions. The Office Action has not addressed these requirements with any such reasons and/or examples. Moreover, the Office Action improperly asserts that the claims are not linked by a single general inventive concept. This is not the test for a restriction. Notwithstanding, the only evidence and/or reasons provided is based solely upon an alleged difference of claim scope. This runs contrary to the M.P.E.P., which requires claims to have differences in scope. M.P.E.P. § 706.03(k) explains that the courts support an “applicant's right to restate (i.e., by plural claiming) the invention in a reasonable number of ways,” and further requires that claims have different scopes. Thus, under M.P.E.P. § 706.03(k) Applicant is entitled to multiple claims for the same general invention. Accordingly, Applicant respectfully traverses the restriction requirement because the claimed inventions are not independent or distinct. Nor would there be a significant burden on the Examiner. As the Office Action fails to provide any evidence or rationale in support of the restriction requirement, Applicant respectfully requests that the restriction be withdrawn.

Notwithstanding, M.P.E.P. § 818.03(b) requires a provisional election. In compliance therewith, Applicant elects Species I. This species has been alleged to include claims 1-2 and 5-7; however Applicant does not fully understand the basis for the restriction and does not acquiesce to the restriction or to any characterization of the claims.

Applicant respectfully requests that the Examiner reconsider the appropriateness of the species election requirement in light of the above. Withdrawal of the restriction requirement is respectfully requested.

If the Examiner has any questions or comments, a telephone call to the number indicated below is invited.

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